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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 CASSANDRA S.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

CASE NO. 2:19-cv-01323-BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
PROCEEDINGS**

12
13 Plaintiff appeals the ALJ's decision finding her not disabled. She contends the Court
14 should remand the case for further proceedings because the ALJ erroneously (1) found at step two
15 Chronic Fatigue Syndrome (CFS) is not a severe impairment; (2) found plaintiff's mental health
16 conditions do not meet or equal the requirements of the Listing 12.04 or 12.06; (3) misevaluated
17 the opinions of examining doctor David Mashburn, Ph.D., and plaintiff's testimony about the
18 severity of her impairments; and (4) consequently rendered a Residual Functional Capacity (RFC)
19 determination that does not account for the full extent of all of plaintiff's limitations on her
20 ability to perform gainful work.

21 For the reasons set forth below, the Court **REVERSES** the Commissioner's final
22 decision and **REMANDS** the matter for further administrative proceedings under sentence
23 four of 42 U.S.C. § 405(g).

DISCUSSION

A. Step Two - Chronic Fatigue Syndrome

At step two the ALJ found CFS is not a medically determinable impairment because, among other things, the record does not contain a medical diagnosis that meets the requirements of SSR 14-1p. Tr. 18. Plaintiff argues the ALJ erred because another ALJ earlier found in 2013 that CFS is a severe impairment, CFS is mentioned in her medical records' problem lists, and her records show she has long complained of fatigue problems. Dkt. 10 at 3-5. Plaintiff's arguments fail. The prior ALJ's finding was based upon an SSR not applicable here. While SSRs do not have the force of law, they "constitute Social Security Administration (SSA) interpretations of the statute it administers and of its own regulations," and are binding on all SSA adjudicators. 20 C.F.R. § 402.35(b); *Holohan v. Massanari*, 246 F.3d 1195, 1203 n.1 (9th Cir. 2001). The Court gives such rulings deference "unless they are plainly erroneous or inconsistent with the Act or regulations." *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989).

SSR 14-1p was promulgated in 2014, and governs this case. The ALJ applied this SSR which requires for CFS to be deemed medically determinable, there must be medical evidence establishing certain diagnostic symptoms; a claimant's statements or symptoms alone are insufficient. The record here contains references to CFS but does not contain a medical diagnosis based upon diagnostic symptoms that meet the criterial set forth in SSR 14-1p. Thus the Court cannot say the ALJ unreasonably found CFS is not a medically determinable condition at step two.

The ALJ gave other reasons as to why CFS is not medically determinable but even assuming the other reasons are erroneous, the error is harmless because as noted above the ALJ

1 gave a valid supported by substantial evidence. The Court accordingly affirms the ALJ's step
2 two finding that CFS is not a severe impairment.

3 **B. Dr. Mashburn**

4 Plaintiff contends the ALJ erred in rejecting Dr. Mashburn's assessment of "an overall
5 severity rating of marked." Tr. 25. The ALJ rejected the opinion first finding plaintiff's mental
6 status exam (MSE) was "normal in terms of orientation, perception, memory, fund of knowledge
7 and abstract thought," and "insight and judgment were only mildly impaired." *Id.* The ALJ's
8 assessment of Dr. Mashburn's opinion is impermissible selective. Dr. Mashburn noted in the
9 MSE plaintiff appeared "tense," that her attitude and behavior was "anxious," and that her mood
10 and affect were "depressed and anxious all the time." Tr. 585. He further noted in the MSE
11 plaintiff's thought process and content, concentration, were not within normal limits, and her
12 insight and judgment were not within normal limits "Mild." *Id.* Hence the ALJ impermissibly
13 downplayed the abnormal findings contained in plaintiff's MSE and focused only on the normal
14 findings.

15 Moreover, Dr. Mashburn did not opine plaintiff had concentration, memory or perception
16 limitations that preclud work. Rather he opined plaintiff was mildly or not at all impaired in her
17 ability to understand, remember, and persists in tasks following very short and simple
18 instructions and moderately impaired in her ability to perform such tasks following detailed
19 instructions. Tr. 584. Hence the MSE results and the doctor's opinion are consistent, not
20 inconsistent as the ALJ found.

21 In reviewing Dr. Mashburn's entire assessment, it indicates plaintiff's limitations flow
22 from anxiety and depression, rather than a cognitive deficit such as concentration, ability to
23 understand, memory, fund of knowledge or perception. Dr. Mashburn noted under anxiety that

1 “catastrophic thinking rules her mind most of the time,” and under depression “severe-See
2 Hamilton rating.” Tr. 583. The ALJ did not provide a basis to reject Dr. Mashburn’s opinions
3 about the impact of anxiety and depression on plaintiff’s functioning and instead focused on
4 MSE findings which do not contradict Dr. Mashburn’s opinion that plaintiff has the cognitive
5 ability to perform some work.

6 The ALJ also rejected Dr. Mashburn’s opinion because he noted “plaintiff reported and
7 demonstrated mental fog” but did not explain “the actions by which the claimant demonstrated
8 this.” Tr. 26. However, as noted above Dr. Mashburn did not opine plaintiff has concentration,
9 perception or memory limitations precluding work. Rather he opined she was mildly or not at all
10 impaired in her ability to understand, remember, and persists in tasks following very short and
11 simple instructions and moderately impaired in her ability to perform such tasks following
12 detailed instructions. Tr. 584. The doctor’s failure to explain plaintiff’s mental fog is not grounds
13 to reject his opinions.

14 The ALJ further rejected Dr. Mashburn’s opinion because plaintiff was alert and had
15 normal cognition when she saw treatment providers and Dr. Mashburn did not investigate
16 whether plaintiff’s mental fog was caused by marijuana use. Again, the ALJ’s focus on
17 plaintiff’s mental acuity and cognition is misplaced. Dr. Mashburn found plaintiff has the
18 cognitive ability to perform some work, despite being aware of plaintiff’s complaints of mental
19 fog and her daily use of marijuana. Tr. 582. Dr. Mashburn’s opinion thus is consonant with the
20 ALJ’s finding plaintiff has sufficient “cognition” Tr. 26, to perform some work.

21 For these reasons the Court finds the ALJ harmfully erred in rejecting Dr. Mashburn’s
22 opinions.

23 **C. Listing 12.04 and 12.06**

1 Plaintiff contends the ALJ erred in failing to she meets the requirements of Listing 12.04
2 and 12.06. In specific she contends the ALJ erroneously found she does not meet the criteria set
3 forth in “Paragraph B.” However, as the Commissioner points out, the ALJ’s finding is
4 reasonably supported by the medical record which indicates that plaintiff on many occasions had
5 mostly normal mental status examinations. Dkt. 13 at 4. Plaintiff presents an alternative
6 interpretation of the record but because the Court cannot say the ALJ’s determination is
7 unreasonable, the Court affirms the ALJ’s finding.

8 **CONCLUSION**

9 For the foregoing reasons, the Commissioner’s decision is **REVERSED** and this case is
10 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

11 On remand, the ALJ shall reassess the opinions of Dr. Mashburn, develop the record and
12 redetermine plaintiff’s RFC as needed and proceed to the remaining steps as appropriate.

13 DATED this 6th day of April, 2020.

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BRIAN A. TSUCHIDA
Chief United States Magistrate Judge